IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 154 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

ARUNODAY MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 154 of 1994

MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

In this reference at the instance of the revenue, the following questions of law are referred for the opinion of this Court. Question No.1 is in relation to assessment year 1983-84 and question No.2 is in relation to assessment year 1984-85.

(i) Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow depreciation on the cost of plant and machinery without deducting the amount of subsidy received by the assessee?

(ii) Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT (A) allowing travelling expenses in full and 2/3rd of other expenses in respect of foreign tours and technicians?

2. Heard Mr Manish R Bhatt, learned Sr.Standing Counsel appearing for the applicant- revenue. Nobody appears on behalf of the respondent- assessee, though notice was duly served.

3. As far as question referred for assessment year 1983-84 is concerned, the issue is clearly covered by the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax vs. P.J. Chemicals Ltd. (1994) 210 ITR 830 wherein it was held that where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost". The expression "actual cost" in section 43(1) of the Income-tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from "actual cost". The amount of subsidy is not to be deducted from the "actual cost" under section 43(1) for the purpose of calculation of depreciation, etc..

4. Here, in the present case, the CIT (Appeals) Rajkot in his order dated 14-10-1988 has observed that the appellant had received subsidy for locating industry in a backward area and this subsidy was not related to any particular plant or machinery but to the total investment made by the appellant. The said finding was

not disturbed by the Tribunal and the issue was decided in favour of the assessee following the decision of the Jurisdictional High court in the case of Grace Paper Industries reported in 183 ITR 591.

Since the finding given by the lower authorities is in consonance with the law laid down by this Court as well as the Hon'ble Supreme Court, no interference is called for by us.

In view of the above decision of the Hon'ble Supreme Court as well as in view of the finding arrived at by the appellate authorities below, we are of the view that the Tribunal was justified in directing the Assessing Officer to allow depreciation on the cost of plant and machinery without deducting the amount of subsidy received by the assessee.

We, therefore, answer question No.1 in the affirmative i.e. in favor of the assessee and against the revenue.

5. As far as question No.2 which is referred for the opinion of this Court for assessment year 1984-85 is concerned, the Tribunal has observed in paras 7 and 8 of its order drawing the statement of case as under:-

> 7. The assessee claimed travelling and conveyance expenses at Rs.545652/-. Out of the total claim an amount of Rs.52000/- was on account of air travel fare and Rs.25979/- on other travelling expenses, totalling Rs.77979/-. On inquiry, as the assessee could not submit the authorisation from R.B.I. and survey report and other details, the Assessing Officer disallowed the whole claim. In addition to this excess expenditure as per Rule 6D amounting to Rs.11672/- and another estimated 20% of Rs.64661/- being expenditure on conveyance and drivers etc. and another Rs.1000/- on estimate basis travelling allowance was also disallowed by the Assessing Officer.
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> 8. The CIT (A) allowed the claim of the assessee to extent of Rs.77979/- being the amount spent on sending four technicians for an international machinery fair at Milana, Italy. This was also allowed because the CIT (A) was of the view that the details furnished before him indicated that the visit was for acquiring better knowledge of machinery and, therefore,

exclusively for the purpose of business.

Since this was the finding of fact given by the Tribunal, we are of the view that the Tribunal was right in allowing travelling expenses in full and 2/3rd of other expenses in respect of foreign tours of technicians.

We, therefore, answer this question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-